

IN THE CIRCUIT COURT OF DEKALB COUNTY, MISSOURI

RUTH NICHOLSON, et al.,

Plaintiffs,

v.

PRIME TANNING CORP., et al.,

Defendants.

Case No. 09DK-CC00052

**FILED**

JUL 10 2009

JULIE WHITSELL  
Circuit Clerk & Ex-Officio Recorder  
DEKALB COUNTY, MO

ANSWER OF DEFENDANT NATIONAL BEEF LEATHERS, LLC

Defendant, National Beef Leathers, LLC ("NBL"),<sup>1</sup> hereby answers Plaintiffs' First Amended Class Action Petition ("Petition").

**I. ADMISSIONS AND DENIALS**

NBL hereby sets forth its admissions and denials to the allegations set forth in Plaintiffs' Petition, as follows:

**As To Nature Of The Case**

In response to the Nature Of The Case section of Plaintiffs' Petition, NBL states:

1. In response to paragraph 1 thereof, NBL states that this paragraph does not contain allegations of purported fact in support of a claim against NBL but rather is comprised entirely of statements characterizing the nature of Plaintiffs' Petition, and therefore no admission or denial of the statements in this paragraph is required of NBL. To the extent that the Court makes any determination to the contrary, NBL denies the allegations contained in this paragraph.

2. NBL denies the allegations contained in paragraph 2 thereof.

<sup>1</sup> The caption of Plaintiffs' Petition incorrectly identifies NBL as "National Beef Leathers Co., LLC."

### As To The Parties

In response to the The Parties section of Plaintiffs' Petition, NBL states:

3. NBL is without information or knowledge sufficient to enable it to form a belief as to the truth of the allegations contained in paragraph 3 thereof and therefore denies same.

4. NBL is without information or knowledge sufficient to enable it to form a belief as to the truth of the allegations contained in paragraph 4 thereof and therefore denies same.

5. NBL is without information or knowledge sufficient to enable it to form a belief as to the truth of the allegations contained in paragraph 5 thereof and therefore denies same.

6. NBL is without information or knowledge sufficient to enable it to form a belief as to the truth of the allegations contained in paragraph 6 thereof and therefore denies same.

7. NBL is without information or knowledge sufficient to enable it to form a belief as to the truth of the allegations contained in paragraph 7 thereof and therefore denies same.

8. In response to paragraph 8, NBL admits that it is a Delaware limited liability company and that, as of March 9, 2009, its principal place of business is St. Joseph, Missouri.

9. NBL is without information or knowledge sufficient to enable it to form a belief as to the truth of the allegations contained in paragraph 9 thereof and therefore denies same.

### As To Jurisdiction And Venue

In response to the Jurisdiction And Venue section of Plaintiffs' Petition, NBL states:

10. NBL denies the allegations contained in paragraph 10 thereof.

11. NBL denies the allegations contained in paragraph 11 thereof.

### As To Factual Allegations Common To All Claims

In response to the Factual Allegations Common To All Claims section of Plaintiffs' Petition, NBL states:

12. NBL denies the allegations contained in paragraph 12 thereof.

13. NBL denies the allegations contained in paragraph 13 thereof.

14. NBL is without information or knowledge sufficient to enable it to form a belief as to the truth of the allegations contained in paragraph 14 thereof and therefore denies same.

15. In response to paragraph 15 thereof, NBL admits that CR(VI) compounds in certain quantities and under certain conditions are state-and federally-regulated materials; but NBL denies the accuracy and truth of the broad, unqualified allegations contained in paragraph 15 thereof and all inferences suggested by those allegations.

16. NBL denies the allegations contained in paragraph 16 thereof.

17. NBL denies the allegations contained in paragraph 17 thereof.

18. NBL denies the allegations contained in paragraph 18 thereof.

19. NBL denies the allegations contained in paragraph 19 thereof.

20. NBL denies the allegations contained in paragraph 20 thereof.

21. NBL denies the allegations contained in paragraph 21 thereof.

#### **As To Class Action Allegations**

In response to the Class Action Allegations section of Plaintiffs' Petition, NBL states:

22. In response to paragraph 22 thereof, NBL realleges and adopts by reference its responses to paragraphs 1-21, inclusive, of Plaintiffs' Petition as if fully set forth herein.

23. In response to paragraph 23 thereof, NBL states that this paragraph does not contain allegations of purported fact in support of a claim against NBL but rather is comprised entirely of statements characterizing the nature of Plaintiffs' Petition, and therefore no admission or denial of the statements in this paragraph is required of NBL. To the extent that the Court makes any determination to the contrary, NBL denies the allegations contained in this paragraph.

24. NBL denies the allegations contained in paragraph 24 thereof.



25. NBL denies the allegations contained in paragraph 25, including subparts a.-f., thereof.

26. NBL denies the allegations contained in paragraph 26 thereof.

27. NBL denies the allegations contained in paragraph 27 thereof.

28. NBL denies the allegations contained in paragraph 28 thereof.

29. NBL denies the allegations contained in paragraph 29 thereof.

30. NBL denies the allegations contained in paragraph 30 thereof.

31. NBL denies the allegations contained in paragraph 31 thereof.

#### As to Count One

In response to Count One (Medical Monitoring) of Plaintiffs' Petition, NBL states:

32. In response to paragraph 32 thereof, NBL states that this paragraph does not contain allegations of purported fact in support of a claim against NBL but rather is comprised entirely of legal argument as to which no admission or denial is required of NBL. To the extent that the Court makes any determination to the contrary, NBL denies that the excerpts from the Meyer case set forth by Plaintiffs in this paragraph accurately and completely reflect the legal principles and reasoning set forth in that case and therefore denies same.

33. In response to paragraph 33 thereof, NBL states that this paragraph does not contain allegations of purported fact in support of a claim against NBL but rather is comprised entirely of legal argument as to which no admission or denial is required of NBL. To the extent that the Court makes any determination to the contrary, NBL denies that the excerpts from the Meyer case set forth by Plaintiffs in this paragraph accurately and completely reflect the legal principles and reasoning set forth in that case and therefore denies same.

34. NBL denies the allegations contained in paragraph 34 thereof.

35. NBL denies the allegations contained in paragraph 35 thereof.

36. NBL denies the allegations contained in paragraph 36 thereof.

37. NBL denies the allegations contained in paragraph 37 thereof.

#### **As to Count Two**

In response to Count Two (Civil Conspiracy) of Plaintiffs' Petition, NBL states:

38. In response to paragraph 38 thereof, NBL realleges and adopts by reference its responses to paragraphs 1-37, inclusive, of Plaintiffs' Petition as if fully set forth herein.

39. In response to paragraph 39 thereof, NBL states that this paragraph does not contain allegations of purported fact in support of a claim against NBL but rather is comprised entirely of legal argument as to which no admission or denial is required by NBL. To the extent that the Court makes any determination to the contrary, NBL denies that the excerpts from the cases set forth by Plaintiffs in this paragraph accurately and completely reflect the legal principles and reasoning set forth in those cases and therefore denies same.

40. NBL denies the allegations contained in paragraph 40 thereof.

41. NBL denies the allegations contained in paragraph 41 thereof.

42. NBL denies the allegations contained in paragraph 42 thereof.

43. NBL denies the allegations contained in paragraph 43 thereof.

44. NBL denies the allegations contained in paragraph 44 thereof.

#### **As To Prayer For Relief**

In response to the Prayer For Relief section of Plaintiffs' Petition, NBL states that this section does not contain allegations of purported fact in support of a claim against NBL and therefore no admission or denial of the statements in this section is required of NBL. To the extent that the Court makes any determination to the contrary, NBL denies the allegations

contained in this section and further denies that Plaintiffs are entitled to any of the relief sought thereby.

### **As to Demand For Jury Trial**

In response to the Demand For Jury Trial section of Plaintiffs' Petition, NBL states that this section does not contain allegations of purported fact in support of a claim against NBL and therefore no admission or denial is required of NBL.

## **II. AFFIRMATIVE DEFENSES**

NBL hereby sets forth its affirmative defenses to Plaintiffs' Petition, as follows:

**First Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that DeKalb County is not the proper venue for this action.

**Second Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that Plaintiffs have failed to state a claim against NBL upon which relief may be granted.

**Third Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that Plaintiffs' claims against it are barred because Plaintiffs have failed to allege facts as to NBL with sufficient specificity to provide NBL sufficient information regarding the bases of Plaintiffs' claims against it for NBL to reasonably develop and present its defenses to those claims, in that Plaintiffs have failed to provide NBL reasonable notice of the time, place, nature, and manner of its allegedly wrongful conduct.

**Fourth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that Plaintiffs' claims against it are barred by the applicable statute(s) of limitations.

**Fifth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that Plaintiffs' claims are barred by the applicable statute(s) of repose as to the alleged product(s).



**Sixth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that Plaintiffs' claims against it are barred by the equitable doctrine of laches.

**Seventh Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that if Plaintiffs were exposed to hexavalent chromium by reason of any alleged product(s) produced, supplied or otherwise allegedly placed in the stream of commerce by NBL, as alleged in Plaintiffs' Petition, which allegation NBL expressly denies, such exposure was de minimus and insufficient to establish with reasonable probability that any such alleged product(s) caused or was a significant contributing factor to the alleged injury, damage, or loss to Plaintiffs.

**Eighth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that it is entitled to a complete set-off against the amount of any recovery that Plaintiffs may otherwise have against NBL with respect to their claims against it in the amount of either (1) the stipulated amount of all settlement agreements between all other alleged tortfeasors and Plaintiffs or any other person, or (2) the amount of consideration all other alleged tortfeasors paid to Plaintiffs or to any other person, for release or discharge, whichever is greater, as provided by R.S.Mo. § 537.060.

**Ninth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that it is entitled to a set-off from any recovery against it to the extent of any and all benefits paid or payable to, or on behalf of, Plaintiffs or any other person from any and all collateral sources.

**Tenth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that if Plaintiffs should hereafter have any judgment rendered in their favor for any alleged injuries, damages, and/or losses against any entity other than NBL, then NBL is entitled to a set-off in the amount of said judgment.

**Eleventh Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that if it is proven at the time of trial that NBL is liable for damages to Plaintiffs, said liability is not sole but rather proportionate between or among NBL and one or more of the other Defendants, and, consequently, NBL is entitled to have its liability, if any, limited to its proximate share or, alternatively, is entitled to contribution and/or indemnity from such other Defendant or Defendants based on comparative fault and/or vicarious liability.

**Twelfth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that if Plaintiffs sustained any injuries, damages, or losses as alleged, which is specifically denied, those damages were caused, in whole or in part, by the acts, omissions or faults of others for whom NBL is not responsible; accordingly, NBL is entitled to an assessment of the relative degree of fault of all such persons or entities as provided by R.S.Mo. § 537.067.

**Thirteenth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that Plaintiffs' claims against it are barred by its compliance with the specifications provided to it for any alleged product(s) produced, sold, or otherwise allegedly placed in the stream of commerce as alleged in Plaintiffs' Petition.

**Fourteenth Affirmative Defense:** For further answer, and as an affirmative defense, Plaintiffs' claims may be preempted in whole or in part by federal and/or state statutes and/or regulations.

**Fifteenth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that Plaintiffs' claims against it are barred to the extent the alleged damages and injuries complained of were proximately caused by the acts and/or omissions of third parties that constitute a superseding cause of any and all such damages and claims.



**Sixteenth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that if Plaintiffs have any product(s) liability claims against it, which is specifically denied, the same is barred or limited by some or all of the provisions of the Missouri Product Liability Act, R.S.Mo. § 537.760 et seq., including, but not limited to R.S.Mo. §§ 537.764 and 537.765.

**Seventeenth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that the Court cannot conduct a complete and just adjudication of this matter to the extent Plaintiffs have failed to join indispensable parties.

**Eighteenth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that to the extent that Plaintiffs seek to impose joint and several liability upon NBL, any and all such claims are barred because the imposition of such liability would violate NBL's substantive and procedural rights provided and guaranteed it by the United States Constitution and the Missouri Constitution, including but not limited to the provisions of Article I, Bill of Rights, Sections 10, 19 and 21 of the Constitution of the State of Missouri of 1945 and of the Fifth, Eighth and Fourteenth Amendments to the United States Constitution. Further, such damages are precluded because they would subject NBL to excessive fines and punishment and would be a violation of due process.

Further, recovery of such damages by Plaintiffs would deny NBL of property without due process of law in violation of Article I, Bill of Rights, Sections 10, 19 and 21 of the Constitution of the State of Missouri of 1945 and of the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, because such recovery would allow an award that is grossly excessive or wholly disproportionate to the offense and obviously unreasonable and give the Defendant no notice of the consequences of its conduct.

Recovery of such damages by Plaintiffs deprives NBL of property without due process of law and further deprives NBL of the equal protection of the laws in violation of Defendant's rights under the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, Bill of Rights, Sections 2 and 10 of the Constitution of the State of Missouri of 1945.

**Nineteenth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that to the extent that Plaintiffs seeks to impose joint and several liability upon NBL, such damages are precluded under R.S.Mo. § 537.067.1.

**Twentieth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that Plaintiffs' claims against NBL apparently seeking punitive damages violate the substantive and procedural rights provided and guaranteed NBL by the United States Constitution and the Missouri Constitution. Plaintiffs' claims seeking punitive damages violate NBL's rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. In addition, Plaintiffs' claims for punitive damages violate Article I, Sections 2, 8, 10, 13, 14, 18(a), 19 and 21 of the Missouri Constitution in the following respects:

- (a) The Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2 and 10, of the Missouri Constitution are violated, because the jury or fact finder has total discretionary powers to award punitive damages, and adequate, objective legal standards do not exist to guide and limit the jury's or fact finder's discretion, thus allowing an award of punitive damages to be irrational, arbitrary, and capricious and based on vague, unpredictable, conflicting, and purely subjective standards;
- (b) The Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2 and 10, of

the Missouri Constitution are violated because the vague and inconsistent legal standards for the imposition of punitive damages deprive NBL of sufficient notice of the type of conduct and mental state upon which an award of punitive damages could result from NBL's alleged misconduct;

- (c) The Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2 and 10, of the Missouri Constitution are violated, because the guidelines, standards, procedures, and instructions for the imposition of punitive damages are ambiguous, indefinite, vague, uncertain, conflicting, purely subjective, and fundamentally unfair;
- (d) The Due Process and Equal Protections Clauses of the Fifth and Fourteenth Amendments to the United States Constitution are violated because no objective limitations are established concerning the amount or severity of the punitive damages;
- (e) Article I, Section 21, of the Missouri Constitution is violated, because punitive damages constitute penal damages and amount to an unconstitutional criminal and excessive fine or punishment in a civil proceeding;
- (f) The Fifth and Sixth Amendments to the United States Constitution and Article I, Sections 18(a) and (19), of the Missouri Constitution are violated, because NBL cannot exercise all of the constitutional and statutory rights that must be accorded to a party that is subject to the imposition of criminal penalty in the form of punitive damages;



- (g) The Equal Protection Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 2, of the Missouri Constitution are violated, because punitive damages discriminate against NBL on the basis of wealth, in that greater punitive damage awards for the identical conduct may be awarded against some Defendants who have more economic wealth than other Defendants;
- (h) The Fifth Amendment to the United States Constitution and Article I, Section 8, of the Missouri Constitution are violated, because the imposition of punitive damages on NBL is based on vague, conflicting, uncertain, and purely subjective standards, without adequate notice to NBL, create a chilling effect on speech and expression;
- (i) The Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2, 10, and 14, of the Missouri Constitution are violated, because the imposition of punitive damages impairs NBL's right of access to the courts to adjudicate civil disputes.

**Twenty-First Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that Plaintiffs' claims against NBL apparently seeking punitive damages are barred because an award of punitive damages against NBL would contravene the public policy of the State of Missouri.

**Twenty-Second Affirmative Defense:** For further answer, and as an affirmative defense, NBL states that R.S.Mo. §§ 537.067, and 537.765 are unconstitutional to the extent these statutes are applied to the facts of this case.

**Twenty-Third Affirmative Defense:** For further answer, and as an affirmative defense, NBL hereby incorporates by reference all other affirmative defenses raised by any other Defendant in this action.

**Twenty-Fourth Affirmative Defense:** For further answer, and as an affirmative defense, NBL states it reserves the right to assert any and all affirmative defenses that may be determined to exist through the course of discovery.

### **III. REQUEST FOR RELIEF**

For the reasons stated above, NBL respectfully requests the Court to deny Plaintiffs any relief with respect to their claims against NBL; to award NBL its costs incurred in defending against the claims asserted against it by Plaintiffs; and to award it all further appropriate relief.

Date: July 10, 2009

Respectfully submitted,



W.C. Blanton

#54125

Stephen J. Torline

#49483

HUSCH BLACKWELL SANDERS LLP

4801 Main Street, Suite 1000

Kansas City, MO 64112

Telephone: (816) 983-8000

Facsimile: (816) 983-8080

[wc.blanton@huschblackwell.com](mailto:wc.blanton@huschblackwell.com)

[stephen.torline@huschblackwell.com](mailto:stephen.torline@huschblackwell.com)

**ATTORNEYS FOR DEFENDANT  
NATIONAL BEEF LEATHERS, LLC**



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing **ANSWER OF DEFENDANT NATIONAL BEEF LEATHERS, LLC** have been deposited in the U.S. Mail, first class postage prepaid, this 10th day of July, 2009, to the following:

Charles F. Speer  
Tammy R. Dodson  
Gerald Lee Cross, Jr.  
Kirra N. Jones  
Speer Law Firm, P.A.  
104 W. 9th Street, Suite 305  
Kansas City, MO 64105

**ATTORNEYS FOR PLAINTIFFS**

R. Dan Boulware  
Todd H. Bartels  
Seth C. Wright  
Polsinelli Shughart PC  
3101 Frederick Avenue  
St. Joseph, Missouri 64506

Dennis J. Dobbels  
Polsinelli Shughart PC  
Twelve Wyandotte Plaza  
120 West 12th Street  
Kansas City, MO 64105

**ATTORNEYS FOR DEFENDANTS  
PRIME TANNING CORP. AND  
PRIME TANNING CO., INC.**

Scott R. Ast  
SCHARNHORST AST & KENNARD, PC  
1000 Walnut  
Suite 1550  
Kansas City, MO 64106

**ATTORNEYS FOR DEFENDANT  
RICK REAM**



---

W.C. Blanton  
HUSCH BLACKWELL SANDERS LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112